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## II. FINDINGS OF FACT

2.1 Appellant Douglas L. Noble is a Classification Counselor 2 and a permanent employee of Respondent Department of Corrections (DOC). Appellant and Respondent are subject to Chapters 41.06 and 41.64 RCW and the rules promulgated thereunder, Titles 356 and 358 WAC. Appellant filed a timely appeal on February 1, 1999.

2.2 Appellant works at the Washington Corrections Center in Shelton, Washington. Appellant is the Reception Center Testing Counselor. Appellant's anniversary date is July 6, 1981.

2.3 Appellant's supervisor is Sam Cannon, Correctional Unit Supervisor. However, due to Mr. Cannon's temporary assignment as a Correctional Program Manager, during the year preceding July 6, 1998, Appellant was supervised by Pat Colton from January through June and by Richard Bowman during July. Mr. Bowman was Appellant's supervisor until September when Mr. Cannon again became Appellant's supervisor.

2.4 In August 1998, Mr. Cannon talked to Appellant about starting the July 6, 1997 through July 6, 1998 evaluation process. On September 1, 1998, Mr. Cannon put a copy of the evaluation worksheet in Appellant's distribution box. In addition, Mr. Cannon asked Mr. Colton and Mr. Bowman for input about Appellant's performance. Mr. Colton and Mr. Bowman provided oral input. Appellant completed the employee worksheet.

2.5 Mr. Cannon and Appellant met and discussed the evaluation. Due to work load issues, Mr. Cannon did not complete the evaluation form until December 3, 1998.

2.6 Between July 1997 and July 1998, Appellant received input regarding his performance. On July 24, 1997, Mr. Cannon met with Appellant to discuss the unacceptable amount of errors

1 Appellant was making. On August 8, 1997, Jerry Tausher, Correctional Program Manager, brought  
2 an error to Appellant's attention, commented that Appellant was not taking adequate time to review  
3 reports prior to signature, and instructed him to review his paperwork to eliminate such errors. On  
4 August 17, 1997, Mr. Tausher again brought an error to Appellant's attention and instructed him to  
5 review materials for correctness. On September 10, 1997, Mr. Cannon and Appellant met for a  
6 corrective interview to discuss issues with Appellant's time keeping, report corrections and tracking  
7 system. On September 15, 1997, Mr. Cannon and Appellant met for a follow-up supervisory  
8 conference to the September 10, 1997 counseling. During the conference, Mr. Cannon instructed  
9 Appellant to stay focused and abreast of current procedures, to work on one file at a time, and to  
10 maintain normal work hours unless a deviation was approved.

11 2.7 WAC 356-30-300 provides, in relevant part:  
12

13 . . . .

14 (2) The annual evaluation will be conducted during the sixty-day period following  
15 the employee's anniversary date, except an agency can establish, on a consistent  
16 basis, a due date which better accommodates the agency's particular needs. The  
17 evaluation will cover the period ending with the established due date.

18 . . . .

19 (5) The procedures and forms shall:

20 (a) Be designed to aid in communications between supervisors and  
21 subordinates and clarify duties and expectations.

22 . . . .

23 (d) Include provisions for the counseling and the development of employees.

24 (6) Each employee whose work is judged unsatisfactory shall be notified in writing  
25 of the areas in which the work is considered deficient. Unless the deficiency is  
26 extreme, the employee shall be given an opportunity to demonstrate improvement.

27 . . . .

### III. ARGUMENTS OF THE PARTIES

3.1 Appellant argues that his July 6, 1997 through July 6, 1998 performance evaluation was untimely because it was completed more than sixty days after his anniversary date. Appellant contends that the evaluation process did not aid in communications between himself and his supervisor, but rather had the effect of lessening their communications. Appellant further contends that he was not provided any training related to testing. Appellant asserts that because he received no further notices of unsatisfactory work after September 10, 1997, he was under the impression that his work had improved. Appellant contends that he was unaware of any concerns about his performance until he received the performance evaluation. Appellant argues that Respondent violated the provisions of WAC 356-30-300 and as a remedy, asks that the evaluation be invalidated, that he be removed from his present chain of command and that the location of his employment be changed.

3.2 Respondent admits that Appellant's July 6, 1997 through July 6, 1998 performance evaluation was not completed within sixty days of Appellant's July 6 anniversary date. However, Respondent contends that Appellant's supervisor attempted to provide a timely evaluation and that the process was started within sixty days of Appellant's anniversary date. Respondent asserts that the proper procedure and process were followed, that Appellant was given counseling regarding performance issues, and that the issues addressed in Appellant's performance evaluation should not have been a surprise to Appellant. Respondent asserts that a performance evaluation is tool used to help an employee and that in this case, the evaluation was a fair and honest evaluation of Appellant's performance. Respondent contends that the time frame in WAC 356-30-300 is a guideline and that the more important issue is that an employee receive an evaluation. Respondent

1 contends that it satisfied the purpose and met the intent of the rule and that the appeal should be  
2 denied.

#### 3 4 **IV. CONCLUSIONS OF LAW**

5 4.1 The Personnel Appeals Board has jurisdiction over the parties hereto and the subject matter  
6 herein.

7 4.2 In a hearing on appeal of an alleged rule violation, Appellant has the burden of proof. WAC  
8 358-30-170.

9 4.3 The issue here is whether Appellant's annual performance evaluation was timely and  
10 whether Respondent followed the proper evaluation process and procedures.  
11

12 4.4 In Sullivan et al, v. Dep't of Transportation, 71 Wn. App. 317, 858 P.2d 283 (1993), the  
13 court affirmed the Board's determination that administrative requirements for completing  
14 performance evaluations are directory and that removing an untimely evaluation from an  
15 employee's personnel file is inconsistent with the purposes and goals of the evaluation program.  
16 Citing to Niichel v. Lancaster, 97 Wn.2d 620, 647 P.2d 1021 (1982), the court stated that the  
17 department's noncompliance with a directory statute does not invalidate employee evaluations.  
18

19 4.5 In House v. Dept. of Fish and Wildlife, V94-078 (1995), the Board cited to Sullivan and  
20 determined that the provisions in the merit system rules for an "annual" evaluation which "will"  
21 cover the period ending at the specified date to be directory, not mandatory. The Board stated that  
22 there was no showing that the time period covered in the evaluation, as opposed to the content of  
23 the evaluation, adversely affected the appellant. The Board further ruled that removing the  
24 evaluation because of the time period covered would not serve the purposes of the civil service law.

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26

1 4.6 In this case, it is undisputed that the evaluation in question was not completed within sixty  
2 days of Appellant's anniversary date. However, the timeframe found in WAC 356-30-300 is  
3 directory, not mandatory. Furthermore, removing the evaluation from Appellant's personnel file is  
4 inconsistent with the purposes and goals of the evaluation program. Appellant has failed to prove  
5 that Respondent committed a rule violation by failing to comply with the directory provision of the  
6 rule.

7  
8 4.7 The purpose of a performance evaluation is to allow an opportunity for an employee and  
9 his/her supervisor to communicate about the employee's performance, to record the employee's  
10 strengths and weaknesses and to inform the employee regarding how well he/she has contributed to  
11 the fulfillment of the goals and objectives of the agency. Appellant's evaluation satisfied this  
12 purpose. Furthermore, Appellant was made aware of the deficiencies in his performance and was  
13 provided counseling about his deficiencies during the period of time covered by the evaluation.  
14 Appellant should not have been surprised by the information contained in his performance  
15 evaluation.

16 4.8 WAC 356-30-300(6) provides for employees to be notified in writing of extreme  
17 deficiencies in their work and to be given an opportunity to demonstrate improvement. This section  
18 of the rule is intended for disciplinary actions, not for performance evaluations, and does not apply  
19 to the facts presented here.

20  
21 4.9 Appellant has failed to prove that in this case, Respondent's performance evaluation process  
22 constituted a violation of WAC 356-30-300 and his appeal should be denied.

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**V. ORDER**

NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Douglas L. Noble is denied.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 1999.

WASHINGTON STATE PERSONNEL APPEALS BOARD

\_\_\_\_\_  
Walter T. Hubbard, Chair

\_\_\_\_\_  
Gerald L. Morgen, Vice Chair

\_\_\_\_\_  
Nathan S. Ford Jr., Member

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